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9 *Proposed Attorneys for Chapter 7 Trustee, A. Cisneros*

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**

13 In re:

14 JEFFREY S. BEIER,

15 Debtor.

Case No. 8:23-bk-10898-TA

Chapter 7

**NOTICE OF TRUSTEE'S INTENT TO
EMPLOY THE LAW FIRM OF MALCOLM ♦
CISNEROS, A LAW CORPORATION, AS
GENERAL COUNSEL**

**[No Hearing Required Pursuant to Local
Bankruptcy Rule 2014-1(b)(1)]**

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19 **TO THE HONORABLE THEODOR C. ALBERT, UNITED STATES BANKRUPTCY JUDGE;**
20 **THE OFFICE OF THE UNITED STATES TRUSTEE, DEBTOR, DEBTOR'S COUNSEL, AND**
21 **OTHER INTERESTED PARTIES:**

22 **PLEASE TAKE NOTICE** that A. Cisneros, the duly appointed and qualified Chapter 7
23 Trustee ("Trustee") for the bankruptcy estate of Jeffrey S. Beier ("Debtor"), intends to file an
24 application to employ the firm of Malcolm ♦ Cisneros, A Law Corporation ("Firm"), as general counsel
25 for Trustee, pursuant to 11 U.S.C. § 327.¹ Employment of Firm shall be effective August 28, 2023.
26 Pursuant to Local Bankruptcy Rule 2014-1(b)(3), Trustee hereby provides the following information
27 regarding the Application to Employ ("Application"):

28 ¹ All statutory references are to Title 11 of the United States Code unless otherwise indicated.

**I. THE IDENTIFICATION OF THE PROFESSIONAL, PURPOSE, AND SCOPE
OF EMPLOYMENT.**

1. This case was commenced on April 28, 2023, with the filing of a petition under Chapter 11 of the Bankruptcy Code (“Petition”).

2. Debtor’s previous Chapter 11 petition, filed on March 17, 2023, was dismissed on April 4, 2023. *See* United States Bankruptcy Court for the Central District of California, Santa Ana Division case number 8:23-bk-10556-TA, DE 13.

3. In his Schedules A/B and D, Debtor identified his ownership of the real property commonly known as 10 Tucson, Coto De Caza, California 92679 (“Property”), valued it at \$3,117,300, and identified a \$2,757,616 lien against it in favor of Bank of America, N.A. (“BOA”). *See* DE 1.

4. Trustee is informed that, prior to the filing of the Petition, Debtor operated the Property as a rental property and either Debtor or individuals authorized by Debtor received rents in connection with the Property (“Rental Income”).

5. In his Schedule D, Debtor identified BOA’s claim as “unliquidated” and “disputed.” *See* DE 1.

6. On June 2, 2023, Debtor and the Office of the United States Trustee stipulated to appointment of a Chapter 11 Trustee. *See* DE 36-37.

7. On June 7, 2023, Trustee was appointed as the Chapter 11 Trustee of Debtor’s bankruptcy estate. *See* DE 40.

8. On June 27, 2023, at the continued hearing on the Motion to Extend, the Court continued the automatic stay for a further 30 days from entry of an order on the Motion to Extend. *See* DE 52 and 64.

9. On July 7, 2023, following a status conference whereat Trustee made an unopposed oral motion to convert the case to Chapter 7, and pursuant to this Court’s initial schedule order, the Court entered an order converting the case to Chapter 7. *See* DE 57.

10. On July 10, 2023, Trustee was appointed the Chapter 7 Trustee of the Estate. *See* DE 61.

11. On August 9, 2023, Trustee filed a Notice of Assets. The deadline to file proofs of claim is November 13, 2023. *See* DE 70.

12. The 11 U.S.C. § 341(a) was held and concluded on August 9, 2023.² See DE 71.

13. On July 27, 2023, Trustee filed an Application to Employ Brian Thompson (“Broker”) as his real estate broker for the purposes of marketing and sale of the Property (“Broker Application”). See DE 66.

14. On August 9, 2023, Debtor filed an opposition to the Broker Application. See DE 72.

15. On August 31, 2023, Trustee filed a reply to Debtor’s opposition, and the Application was granted at a hearing held on September 12, 2023. See DE 74 and 79.

16. On June 28, 2023, Broker listed the Property for sale at \$3,000,000 on the Multiple Listing Service (“MLS”). Broker subsequently increased the listing asking price to \$3,070,000 on August 3, 2023. See DE 74.

17. Trustee has received and accepted an offer to purchase the Property for \$3,050,000 and has already received an overbid at \$3,200,000.

18. Trustee proposes to retain the law firm of Malcolm ♦ Cisneros, A Law Corporation (“Firm), as attorneys for Trustee, effective thirty (30) days prior to service of the Notice of Trustee’s Intent to Employ Counsel, to represent him in the within bankruptcy case.

19. The Firm emphasizes its practice in bankruptcy and civil litigation, and is able to perform the required legal services. Trustee has selected the Firm because: (1) it has considerable experience in matters of this character, (2) is well qualified to represent him in this case, and (3) has already undertaken representation although there are currently no funds on hand. A copy of the professional biographies of the Firm’s attorneys is attached and incorporated herein as Exhibit “1” to the Declaration of Nathan F. Smith, filed concurrently herewith.

20. Trustee wishes to employ the Firm as his general counsel to *inter alia* review and analyze the Property, the Deed of Trust and Assignments thereof, Debtor’s Alleged Claim Against BONY, the Rental Income, the BONY Claim, and to take any actions necessary to assist Trustee with his administration of this Estate, including, but not limited to negotiations with BONY, commencing fraudulent transfer actions in connection with the Rental Income, filing a motion to sell the Property,

² All statutory references are to Title 11 of the United States Code unless otherwise indicated.

1 preparing a settlement agreement in connection with a potential resolution of the Alleged Claim Against
2 BONY, and filing a motion to approve such agreement in the event one is reached.

3 21. The Firm emphasizes its practice in bankruptcy and civil litigation, and is well able to
4 perform the required legal services efficiently and economically. There is no retainer or fee agreement
5 between Trustee and the Firm, other than as outlined herein. Legal services are now, and will be,
6 required in order to:

- 7 a) advise Trustee on all matters pertaining to the Property, including, but not limited
8 to, the Deed of Trust, Alleged Claim Against BONY, and BONY Claim, selling
9 the Property, and the maximization of the return to the Estate;
- 10 b) advise Trustee on all matters pertaining the Rental Income, including filing a
11 fraudulent transfer action in connection with it;
- 12 c) evaluate avoidance actions, and, if necessary, prosecute them;
- 13 d) take actions necessary to liquidate the assets of the Estate;
- 14 e) prepare and file all documents necessary to obtain Court approval of any
15 compromises and court appearances as necessary;
- 16 f) legal examination of claims, including the BONY Claim, and any litigation
17 including claims negotiations, prepare and file objections and Court appearances
18 as required;
- 19 g) examine witnesses, claimants or adverse parties with respect to any action where
20 the rights of the Estate or Trustee may be affected; and
- 21 h) perform any and all other legal services necessary to protect the rights of Trustee
22 and the Estate.

23 **II. ARRANGEMENT FOR COMPENSATION.**

24 The Firm has not, and will not receive a retainer from Trustee or the Estate. The Firm will seek
25 compensation pursuant to §§ 330 and 331. The hourly billing rate of attorneys of the Firm range from
26 \$350 to \$575/hour, and paralegals/law clerks rates range from \$130 to \$225/hour, as provided below.
27 The Firm will apply for compensation not more frequently than once every 120 days, after notice and a
28 hearing, as required by the Bankruptcy Code. The Firm will accept as compensation such sum as the

Court deems reasonable. There will be no written employment agreement, separate from this Application and the order to be obtained hereon; and the only source of payment of compensation is the Estate.

| <u>Attorneys</u> | <u>2022 Rates</u> |
|--------------------|-------------------|
| William G. Malcolm | \$575.00 |
| Arturo M. Cisneros | \$575.00 |
| Nathan F. Smith | \$505.00 |
| Nicolas Matayron | \$450.00 |
| Charles W. Nunley | \$500.00 |
| Hydee J. Mulichak | \$475.00 |
| Grant Courtney | \$450.00 |
| Kris J. Sundberg | \$450.00 |
| Samuel R. Burton | \$400.00 |
| Brian Thomley | \$425.00 |
| Christina J. Khil | \$375.00 |
| Melissa Sgroi | \$375.00 |
| Esther Torre Smith | \$350.00 |
| Denise Lee | \$350.00 |

| <u>Paralegals/Law Clerks</u> | |
|------------------------------|----------|
| Rylia Tjokrosoeharto | \$225.00 |
| Melissa Fusco | \$200.00 |
| Ernest Cisneros | \$200.00 |
| Mayra Johnson | \$200.00 |
| Leilani Colon Diaz | \$150.00 |
| Erica F. Pedraza | \$130.00 |
| Rhonda White | \$130.00 |

III. PROCEDURE FOR OBTAINING A COPY OF THE APPLICATION TO EMPLOY.

A copy of the Application is available upon written request by contacting Erica Pedraza at Malcolm ♦ Cisneros, A Law Corporation, 2112 Business Center Drive, Irvine, CA 92612, telephone number: (949) 252-9400, facsimile: (949) 252-1032, email: erica@mclaw.org.

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1 **IV. PROCEDURE FOR OBJECTING AND/OR RESPONDING TO THE**
2 **APPLICATION TO EMPLOY.**

3 **PLEASE TAKE FURTHER NOTICE** that if you do not oppose the proposed employment,
4 you need not take further action. Pursuant to Local Bankruptcy Rule 2014-1(b)(3)(E), any opposition to
5 the Application and request for hearing must be filed with the Court in the form required by Local
6 Bankruptcy Rule 9013-1(f)(1) and served upon proposed counsel for Trustee at the address indicated in
7 the upper-left hand corner of the first page of this document and the Office of the United States Trustee
8 no later than 14 days from the date of the service of this notice. Failure to timely file and serve an
9 opposition, response or request for hearing may be deemed consent to the relief sought in the
10 Application.

11 DATED: September 27, 2023

Malcolm ♦ Cisneros, A Law Corporation

12 By: /s/ Nathan F. Smith
13 NATHAN F. SMITH
14 *Proposed Attorneys for Chapter 7 Trustee,*
15 *A. Cisneros*
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **2112 Business Center Drive, 2nd Floor, Irvine, CA 92612**

A true and correct copy of the foregoing document entitled (specify): **NOTICE OF TRUSTEE'S INTENT TO EMPLOY THE LAW FIRM OF MALCOLM ♦ CISNEROS, A LAW CORPORATION, AS GENERAL COUNSEL** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 27, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

OFFICE OF U.S. TRUSTEE: United States Trustee (SA) ustpreregion16.sa.ecf@usdoj.gov
CHAPTER 7 TRUSTEE: Arturo Cisneros (TR) amctrustee@mclaw.org, acisneros@iq7technology.com;
ecf.alert+Cisneros@titlexi.com

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On (date) **September 27, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR: Jeffrey S Beier, P O Box 7644, Laguna Niguel, CA 92677

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **September 27, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

September 27, 2023
Date

Diep Quach
Printed Name

/s/ Diep Quach
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

SECTION 1 CONT.

DEBTOR'S ATTORNEY: Anerio V Altman LakeForestBankruptcy@jubileebk.net, lakeforestpacer@gmail.com
NOTICE: Greg P Campbell ch11ecf@aldridgepite.com, gc@ecf.inforuptcy.com; gcampbell@aldridgepite.com
NOTICE: Arturo Cisneros arturo@mclaw.org, CACD_ECF@mclaw.org
NOTICE: Michael J Hauser michael.hauser@usdoj.gov
NOTICE: Nathan F Smith nathan@mclaw.org, CACD_ECF@mclaw.org; mcecfnotices@ecf.courtdrive.com;
cvalenzuela@mclaw.org

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

SECTION 2 CONT.

Bank of America, National Association
Attn: Bankruptcy Department
PO Box 982238
El Paso, TX 79998

Gary and Patricia Beier
Drakes Bay
Laguna Niguel, CA 92677

INTERNAL REVENUE SERVICE
P.O. BOX 7346
PHILADELPHIA, PA 19101-7346

National Service Professionals
10001 W Oakland Park Blvd Ste 301
Sunrise, FL 33351-6925

Sandy Elsberg
10 Tucson
Trabuco Cyn, CA 92679-5200

~~Sergei Nasonav~~
No complete address

~~Steven Beier~~
~~San Jose~~
No complete address

THE BANK OF NEW YORK MELLON
C/O Bank of America, N.A.
P.O. Box 31785
Tampa FL 33631-3785